



Netherlands Commission for
Environmental Assessment

Observations on Updated Regulations for EIA (March 2015)

Follow-up to regulatory advice provided in August 2014

Memorandum by the NCEA

UGANDA



20 March 2015



Advice of the Secretariat

To National Environmental Management Authority (NEMA), Uganda
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From The Netherlands Commission for Environmental Assessment (NCEA)
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Follow-up to regulatory advice provided in August 2014**

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1. Introduction

The NCEA has had several co-operation activities with the Ugandan NEMA in the past, including an EIA mapping workshop and support on SEA for the Albertine Graben. The NEMA is currently in the process of reviewing a number of regulations and among these are the EIA and Audits regulations. Consultations on the regulations are ongoing. In August 2014 the NEMA requested the NCEA to provide input in the draft EIA regulation. This advice was provided in a separate memo. Subsequently, a new draft of the Ugandan EIA regulation was developed in early 2015. The NCEA was invited to partake in a workshop on this draft in Jinja, Uganda (a separate report on this workshop is available). In Annex 3 to this memo, the key observations of the NCEA on the draft regulation as presented at that workshop are summarised.

In this memo the NCEA presents additional recommendations for the draft EIA regulation dated 13 March, on the basis of discussion that have taken place at the Jinja workshop. We have not addressed all of the topics discussed, but have made a selection of the most pertinent topics. Note that this advice should be read in conjunction with an annotated track-changes version of the draft regulation, which has been provided separately to the NEMA.

In this memo we address screening, review, integration of EIA and decision-making, transboundary EIA, environmental risk assessment, and EIS content requirements.

2. Screening-coverage, and (responsibility for) the screening decision

During the EIA regulations workshop, the screening approach in the Ugandan regulation was discussed. It was proposed to have the following screening schedules:

- Schedule 4 to the NEA: listing projects which require mandatory EIA.
- Schedule 5 to the NEA: listing projects which require a project brief (=light EIA). Schedule 5 is split in two parts: 1) with projects that are to be dealt with at national level (NEMA) and 2) with projects that can be handled by lead agencies (at decentralised levels)
- Schedule 6 to the NEA: detailing projects that may require EIA (in or near vulnerable or protected areas).
- Schedule 7 to the NEA: lists projects or activities which are exempt from EIA.

These lists (some minor work needs to be done for schedule 5, part 2) sometimes contain clear thresholds, but not for all projects listed. This means that NEMA has chosen to introduce a screening system which is a combination of (positive and negative) lists and case-by-case screening decisions (for activities where no threshold is given). The screening approach in the draft text is also characterised by quite long and comprehensive listings of projects under schedules 4 and 5.

1. Coverage

The choice for the screening system described above has advantages and disadvantages: The coverage of projects requiring EIA is quite broad. The advantage is that no project with significant impact can 'escape' EIA. The disadvantage may be that the broad list results in the execution of too many EIA, causing delays within NEMA in processing all these EIA's.

■ The NCEA Recommendation:

As has been discussed during the workshop, a limited number of good quality EIAs with serious follow-up, is generally more effective than a large number of low quality EIAs. Also, efficient and effective execution of the EIA procedure most likely increases the acceptability of EIA by developers, decision makers and politicians. Therefore it is recommended to start piloting the new Schedules and monitor the number of EIAs that these new lists generate, and subsequently assess whether these can be processed with a sufficient quality level, considering the existing capacities of the authorities involved. If the amount of EIA's being conducted as a result of the screening approach turns out to be too high, the Schedules should be adjusted e.g. by moving activities from Schedule 4 to 5 and/or by adding (higher) thresholds. Therefore, the NCEA recommends that the NEA include a provision in the Schedules, giving sufficient possibility for changes to the screening approach. E.g. by stating that the Schedules are valid for X years, but can be adjusted every Y years. If new Schedules are to be designed, consider to also invite representatives like investors and NGO's. For instance, the setting of thresholds could be fine-tuned in a negotiation process with different stakeholders.

2. (Responsibility for) the screening decision

The current draft regulation does not seem to include a formal screening decision. It is up to the developer to screen their own project, to start the relevant process of collecting information, and later submit the necessary documents to the authority. The current EIA regulations does propose that, on a voluntary basis, the developer may submit a 'Notification of the project idea' to the Authority and that the Authority may, within 5 working days of receipt of this expression of interest, advise the developer whether to submit a project brief or a scoping report and terms of reference for the environmental impact study.

Again, there are advantages and disadvantages to this approach: The new Schedules are relatively clear, implying a simple and straight forward screening process for the developer (just checking the lists). For NEMA, time, staff and money required for screening is low, as are the administrative costs for the developer. As long as there are specific and clear thresholds, there is little room for interpretation, and there is limited need for time consuming discussions on the need to EIA or project brief. In cases of doubt, the voluntary procedure for the notification of the project idea can be utilised.

However, there is no check on the developer's screening decision by the authority, and therefore no possibility to correct any mistakes in screening early on. If a developer misinterprets the screening list and starts a project brief for a project that does not need one, or bypasses the EIA procedure for a project that does require an EIA, this will not come to the authority's attention until much later in project development.

Also, a formal screening stage can help set the EIA/project brief process off on a flying start. During this screening step the authority can give the developer specific guidance that will improve the quality of the EIA or project brief, such as reference to EIA sector guidelines, or

pointers for impacts to include, or stakeholders to consult. For example, in the South African EIA regulation (2010) there is a formal application stage, where the developer submits project information, and the authority informs the developer on the appropriate assessment procedure for the project.

In many countries, the screening decision is also published, which means that affected parties can be informed on the start of the EIA or project brief, and prepare themselves for participation. A register of screening decisions may also facilitate future screening decisions for similar projects in similar circumstances.

■ The NCEA recommendation:

In the current regulation, NEMA has opted to leave the responsibility for screening with the developer. The possibility for the developer to seek guidance from the Authority on screening does exist, but it is unclear whether the screening conclusion of the developer has to be approved by the Authority. Such approval would enhance the possibility to verify the accuracy, quality and objectivity of the screening results. We would recommend that provisions are included in the text that formally allocate the screening decision to the authority or lead agency. Note that such a formal screening step may require slightly more time than the current 5 day timeframe mentioned for the “notification of the project idea”. If the Authority would consider including a formal approval of the screening conclusion, the NCEA also recommends to publish such a screening decision.

3. Review– organisation, time, status and participation

During the EIA regulations workshop, the following was proposed regarding comments and review of the Project brief and EIS.

Project brief

Where the Authority deems the project brief to be complete, it shall transmit a copy of the project brief to the relevant lead agency for comments within five working days of receiving the project brief. The lead agency shall make comments and transmit them to the Authority within fifteen working days from the date of receipt of the project brief. Where the lead agency submits comments or fails to make and submit comments to the Authority within 15 working days, the Authority may proceed to consider and make a decision on the project brief.

The Authority shall consider the project brief and the comments made by the lead agency, taking into account:

- a) the type of project or activity planned, considering its life cycle;
- b) the location, size and likely impact of the project or activity;
- c) the technology intended to be used;
- d) land use, subject to the Physical Planning Act;
- e) relevant policies, plans, laws, environmental management instruments and other decision making instruments that have been developed or adopted by the Authority in respect of the kind of project or activity which is the subject of the project brief; and
- f) any other factors of relevance to the particular project or activity to which the project brief relates.

A decision of the Authority on the project brief shall be made within 30 working days of receipt of the project brief. There are no provisions for public participation in review and decision making on the project brief.

EIS

The Authority shall within five working days of receipt of the EIS, transmit the EIS to the relevant lead agency(ies) and request their comments. The lead agency shall review the EIS to:

- i. ensure that it complies with the approved ToR in respect to the lead agency's sector;
- ii. evaluate the likelihood of the adverse effects of the project or activity, taking into account the scope of the project or activity, the level and kind of exposure of the potentially receiving environment to the project or activity, and proposed mitigation measures.

And thereafter make comments and transmit them to the Authority within thirty working days of receiving the EIS. Where the lead agency fails to make comments within 30 days, the Authority may make the decision.

Where the lead agency is the developer it shall not be required to make comments and it shall be required to submit its EIS to the Authority which shall make comments or invite other lead agencies to make comments.

The Authority shall undertake review of an environmental impact statement in accordance with these Regulations and the terms of reference approved by the Authority.

The Authority may, within a period of up to 30 working days of receipt of the EIS, arrange for onsite baseline verification inspections for purposes of inspecting the project area that is the subject of the EIS.

A decision of the Authority on the EIS shall be made within 21 working days from the last received input under Part V of these Regulations (= comments of lead agencies and/or comments of public consultation and/or public hearing).

1. Organisation of review

In the proposed texts, the organization of the review is a combination of review by the lead agencies and the Authority. The text does not include a possibility for including external experts outside government, like university scientists or experts from knowledge institutes.

■ The NCEA recommendation:

There might be situations in which the required expertise for review is not available within the Authority or the lead agencies. The NCEA recommends therefore to include in the text the possibility for the Authority to organise (independent) review by external experts, especially in cases with major environmental impacts, in complex projects or in cases where there is great controversy. However, funds available strongly determine the quality of the review experts; 'super-experts' cost more. If the Authority would decide to have such a provision, this might have implications for the Schedule on fees.

2. Available time for review

The available time for review and decision making is max. 30 days for the project brief. For the EIS this is max. 51 working days in, case no public consultation and public hearing takes place. In case the Authority decides to have public consultation, this period is extended. This allows the Authority to adapt the time for review and decision making: controversial and complex projects are perhaps more likely to require public participation and therefore need more time for review or a more intensive use of the available time than the standard ones.

- The NCEA recommendation:
Include clear timelines for review with and without public participation.

3. Scope and status of the review findings

The texts indicate that the review of the EIS is done based on the approved ToR. The lead agencies are only supposed to review the part of the ToR applicable to their sector and they have to evaluate the likelihood of the adverse effects. During the workshop it was explained that lead agencies receive some guidance on how to do the review in a letter with review instructions. It is however not clear whether review findings by the lead agencies are binding or whether it is at the discretion of the Authority whether and how to consider the review comments.

- The NCEA recommendation:
To enhance transparency and accountability, it is recommended to produce (and publish) a review report, to either (i) explain to the developer what the important shortcomings are, and give recommendations for how and when any serious shortcomings should be remedied and (ii) as a basis for drafting the conditions to the Environmental Certificate and (iii) to have a track record of good practice EIA reports. The requirement on making a review report could be included in the texts of the regulations.

4. Public participation in the review process

In the current draft, public participation as part of review, is only possible for EIS, and only if the Authority decides that it will be organized. There are requirements for consultation during the process of preparing the impact study, but there are no requirements that the consultant share the final conclusions of the assessment during these consultations. The NCEA considers it a criteria for good practice that there is a mechanism to ensure that the affected stakeholders can also be informed on, and react to, the final EIA statement. Developers may misrepresent the consultation outcomes, or neglect to mention a specific measure that affected stakeholders have asked to investigate. Stakeholders should have an opportunity to bring this to the attention of the authority.

For the organisation of public participation in the review stage, the texts are clear on who is responsible and who pays for it. The regulation does not require that the decision to either or not include public participation (or hold a public hearing) in the review stage be justified. Therefore, in practice, potentially affected stakeholders do not know when a project has been reviewed, granted an Environmental approval or what the conditions for this approval may be.

There is also a provision for verification inspections on-site by the Authority. This offers a good opportunity to have some interaction with community stakeholders who happened to show up or be present at the location during such a visit.

- The NCEA recommendation:
Possibilities for public participation, especially at the review stage of EIS, should preferably not be optional but mandatory. Concerning article 28 (1), we recommend that you keep the option to provide comment as a mandatory step (i.e. *shall* instead of *may*), same as it is in, for example, Kenya (Kenya requires publication and invitation of comments in all cases, but a hearing is discretionary). This is the only way in which affected stakeholders can check whether

their concerns and observations made are correctly reflected in the Environmental Impact Study.

4. Integrating EIA into decision-making

The importance of linking EIA and project approval

The way in which EIA is integrated into decision making on project approval will determine how influential EIA is. It is common for the EIA procedure to be tied to some form of environmental approval. Cheryl Wasserman of the US EPA¹ gives some examples: “It may be an approval, conditional approval, or a rejection of the EIA document or of a proposed project based upon the information in the EIA or lack thereof. It may be a formal finding about the “environmental feasibility” of the proposed project. It may be acceptance of the environmental management plan, or whatever the terminology might be for mitigation and monitoring plan, and environmentally important aspects of project design, operation and closure.”

She goes on to explain that “These distinctions can be important to the outcome of the EIA process. Too much emphasis on the adequacy of the EIA document or a one-time determination of “environmental feasibility” reinforces the inadequate attention to ongoing compliance with commitments. All too often EIA requirements fail because they are perceived and implemented as a one-time event.”

In the NCEA’s experience, EIA is less effective if it perceived as an ingredient of environmental approval, and singularly the domain of the environmental agency. Instead, EIA needs to be considered in other project approvals as well. This way other agencies, and elected politicians, can draw the environmental risks of the project into their own decision, and share in the responsibility for maintaining environmental quality.

For example: in countries such as the Netherlands and New Zealand, the EIA is tied into project approvals that are decided by politicians. In New Zealand, EIA is part of the resource consent authorization needed before a developer can make use of a natural resources (such as a land use consent, or a water permit). These consents are issued by regional and district authorities. The environmental staff in these authorities check the quality of the assessment, but do not approve the project itself.

Similarly, in the EIA directive the EU instructs member states to ensure that EIA is related to the development consent decision, whereby the “development consent” means “the decision of the competent authority or authorities which entitles the developer to proceed with the project.” The directive further requires members states to ensure that the EIA information, as well as the results of participation, are taken into account in decision-making on the development consent.

¹ See: Ninth International Conference on Environmental Compliance and Enforcement 2011, ENFORCEMENT OF ENVIRONMENTAL IMPACT ASSESSMENT REQUIREMENTS, WASSERMAN, CHERYL.

Options for improving the linkage in Uganda

In Uganda, the EIA forms the basis for an environmental approval for the project, and the conditions for this approval. The draft law states that other approvals may not be given before the environmental approval has been issued. However, it is not specifically stated that the EIA must be taken into account when these other approvals are decided upon.

■ The NCEA recommendation:

In the future it may be worthwhile exploring options for better integration of EIA into other permitting procedures in Uganda. In the meantime the NCEA recommends that the NEMA makes it clear in the act and the regulation that it is the intention for the EIA to start early, and influence the both project design, as well as project approval decision-making by other authorities.

Example texts to consider are:

“environmental considerations must be integrated into all forms of decision making”
(example from the Australia Environment Protection and Biodiversity Conservation Act).

Or (from the EU EIA directive):

“(2*) ... Union policy on the environment is based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should, as a priority, be rectified at source and that the polluter should pay. Effects on the environment should be taken into account at the earliest possible stage in all the technical planning and decision-making processes.”

Also, consider including decision-making in the definition of the EIA process, such as in this definition of EIA in the EU EIA directive:

“environmental impact assessment” means a process consisting of:

- i. the preparation of an environmental impact assessment report by the developer, as referred to in Article 5(1) and (2);
- ii. the carrying out of consultations as referred to in Article 6 and, where relevant, Article 7;
- iii. the examination by the competent authority of the information presented in the environmental impact assessment report and any supplementary information provided, where necessary, by the developer in accordance with Article 5(3), and any relevant information received through the consultations under Articles 6 and 7;
- iv. the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in point (iii) and, where appropriate, its own supplementary examination; and
- v. the integration of the competent authority's reasoned conclusion into any of the decisions referred to in Article 8a.’

5. Transboundary environmental impact assessments

Notifying the affected country early

The current draft includes articles on the procedural requirements when a neighbouring country is (potentially affected) by a project on Ugandan territory. The provisions now concentrate on the arrangements that need to be made when the Environmental Impact Statement has been prepared. However, it may be equally important to include a provision for notification of the potentially affected country early in the process, at the stage of the scoping report or project brief or even when the project idea is notified. This way the potentially affected country and the relevant Ugandan agency can discuss and agree at the start on the most appropriate arrangements for provision of information and for consultation with relevant agencies and other stakeholders in the potentially affected country.

Article 3 of the draft regulation now seems to suggest such a notification, but it does not come into effect until after the EIS has been finalized. It is worth organizing this contact early, so that the relevant agencies in the potentially affected country can contribute to scoping. They might bring specific issues that need to be addressed in the EIS into view, or have relevant environmental baseline information to contribute.

■ The NCEA recommendation:

To include articles on the early notification of a (potentially) affected neighbouring country under Part VII Transboundary environmental impact assessments. For example (based on the Espoo Convention):

“The authority shall notify the relevant authority or authorities of the potentially affected country or countries as early as possible, for the purposes of ensuring adequate and effective consultations.

The potentially affected country authority will be requested to indicate whether it wishes to participate in the environmental decision, so that adequate arrangements can be made for provision of information and consultation in the potentially affected country.”

A more detailed example of notification requirements for transboundary EIA is included in Annex 1.

Organising affected country input

In addition, part VII on transboundary EIA now does not contain provisions on how written comments or consultations from the potentially affected country will be organized, received and taken in to account.

■ The NCEA recommendation:

To include provisions on how the authority will ensure that input from the affected country can be received. For example (based on the EU EIA directive):

“The authorities of both countries shall, each insofar as it is concerned:

(a) arrange for the information referred to in articles ... (the EIA, the scoping document, etc) to be made available, within a reasonable time, to the relevant authorities and the public concerned in the affected country; and

(b) ensure that the relevant authorities and the public concerned in the affected country are given an opportunity, before project approval is granted, to forward their opinion, within a reasonable time, to the authority.”

6. Environmental Risk Assessment/EIS content

The draft regulation contains provisions related to environmental risk assessment. During the regulation workshop, it became clear that there are different reasons for NEMA to include this in the regulation. Specifically:

- The need to incorporate requirements of Cartagena protocol on risk assessment (and management) as related to introduction of Living Modified Organisms (LMOs).
- The possibility to apply the method of risk assessment (and management) to other types of activities that do not qualify for a project brief or an EIA, but carry high risk of accidents or disasters (transport of hazardous material, for example).
- The possibility to require developers to apply methods associated with risk assessment so that the quality of EIA may be improved. The NEMA expressed frustration about insufficient quality of EIAs (i.e. emissions listed, but no the impacts of emissions) and a need for more scientific analysis of impacts in EIAs.

The NCEA is of the opinion that these are different types of problems, which can be addressed more effectively in different ways, as discussed below.

LMO introduction and other high risk activities that don't require EIA

The implementation of the Cartagena protocol most likely requires a separate procedure that should come into effect when there is a proposal to introduce an LMO. The scope of this assessment will be clear at the outset, since the Cartagena protocol specifies this precisely. The technical expertise that needs to be mobilized within government to evaluate the risk will also be very specific, and likely different from the expertise needed to review EIAs. For these reasons, the risk assessment process for the introduction of LMOs is different from that for an EIA: more narrow in scope and more technical in nature. The same applies to the risk assessment of certain specified high risk activities, such as the transport of hazardous waste. Both types of activities may be better served by separate procedures.

■ The NCEA recommendation:

That the required risk assessments for the introduction for LMOs, and for certain specified high risk activities, are organized in separate procedures, distinct from EIA. Where appropriate, these risk assessment may be integrated into an EIA or a project brief, when the activities are part of a larger project that requires EIA or a project brief.

Risk assessment as part of the EIS

Concerning the idea to encourage developers and their consultants to adopt more 'environmental risk assessment' thinking and methodologies, we would recommend that this is addressed through the EIS requirements. This idea lines up well with recent international developments in EIA reporting. For example, in the recently proposed new Environmental and Social Management Framework, the World Bank proposes to require the description of "environmental and social risks and impacts" in an ESIA report. Similarly, the EU EIA directive,

revised in 2014, requires that an EIA report include a description of effects from relevant risks of major accidents and/or disasters. Requirement nr 8 in Annex IV to this directive also specifically states that risk assessments undertaken to meet other regulatory requirements can be included in the EIA report. Both the World Bank and EU report content requirements are included in Annex 2 to this memo.

The EIS content requirement in the current EIA regulation for Uganda now do not refer to environmental (or social) risks (although a reference to risks has been included in the first schedule, under “Issues to be considered”).

■ The NCEA recommendation:

That the concept of environmental (and social risk) risk is integrated into the second schedule. It can be included in the impacts to be considered in the EIA report (see the World Bank example), but also with a separate content requirement (as in the EU example).

Comprehensive EIS report content requirements

When looking more closely at the content requirements in the Second Schedule to the draft regulation, we conclude that these seem incomplete. The requirements for the format of the EIS seem to stop at the introduction. While the topics that need to be addressed in the summary seem to include a much wider range of report items. In addition, the report headers are listed, but no qualifications are given as to the content under each header. Also, there is no reference to the issues to be considered in the First Schedule, which seems to suggest that these do not need to be addressed specifically in the EIS. It would be worth investing additional effort into the second schedule, so that these content requirements set a clear and comprehensive standard for the content of the EIS.

■ The NCEA recommendation:

To redraft the second schedule on the EIS content requirements. Refer to the examples of the World Bank or the EU in annex 2 for the topics to be addressed, and how the requirements may be worded. These content requirements will need to be streamlined with the project brief and scoping document requirements. We suggest to include content requirements for the following topics:

- Summary (should be non-technical);
- Legal framework for the project (requirements that need to be met);
- Project description (project and project context, different phases of the project, maps, etc);
- Alternatives (reasonable alternatives to proposed project);
- Baseline (including how it will development without project, and analysis of gaps/problems with information);
- Environmental and social risks and impacts (with possible reference to the second schedule issues, and also an explanation of methods used and certainty in impact/risk predictions);
- Mitigation measures (including their feasibility, who will undertake them, etc) and necessary monitoring/management arrangements;
- Environmental monitoring and management approach;
- Overview of consultations undertaken, and how concerns were taken on board;
- Overview of expertise mobilised for EIS, and information sources used.

ANNEXES

**Observations on Updated Regulations for EIA
(March 2015)**

Follow-up to regulatory advice provided in August
2014
(annexes 1 to 3)

ANNEX 1

Notification requirements from the Espoo convention on transboundary EIA

Article 3 on NOTIFICATION

1. For a proposed activity listed in [Appendix I](#) that is likely to cause a significant adverse transboundary impact, the Party of origin shall, for the purposes of ensuring adequate and effective consultations under [Article 5](#), notify any Party which it considers may be an affected Party as early as possible and no later than when informing its own public about that proposed activity.

2. This notification shall contain, *inter alia*:

(a) Information on the proposed activity, including any available information on its possible transboundary impact;

(b) The nature of the possible decision; and

(c) An indication of a reasonable time within which a response under paragraph 3 of this Article is required, taking into account the nature of the proposed activity;

and may include the information set out in paragraph 5 of this Article.

3. The affected Party shall respond to the Party of origin within the time specified in the notification, acknowledging receipt of the notification, and shall indicate whether it intends to participate in the environmental impact assessment procedure.

4. If the affected Party indicates that it does not intend to participate in the environmental impact assessment procedure, or if it does not respond within the time specified in the notification, the provisions in paragraphs 5, 6, 7 and 8 of this Article and in [Articles 4 to 7](#) will not apply. In such circumstances the right of a Party of origin to determine whether to carry out an environmental impact assessment on the basis of its national law and practice is not prejudiced.

5. Upon receipt of a response from the affected Party indicating its desire to participate in the environmental impact assessment procedure, the Party of origin shall, if it has not already done so, provide to the affected Party:

(a) Relevant information regarding the environmental impact assessment procedure, including an indication of the time schedule for transmittal of comments; and

(b) Relevant information on the proposed activity and its possible significant adverse transboundary impact.

6. An affected Party shall, at the request of the Party of origin, provide the latter with reasonably obtainable information relating to the potentially affected environment under the jurisdiction of the affected Party, where such information is necessary for the preparation of the environmental impact assessment documentation. The information shall be furnished promptly and, as appropriate, through a joint body where one exists.

7. When a Party considers that it would be affected by a significant adverse transboundary impact of a proposed activity listed in [Appendix I](#), and when no notification has taken place in accordance with paragraph 1 of this Article, the concerned Parties shall, at the request of the affected Party, exchange sufficient information for the purposes of holding discussions on whether there is likely to be a significant adverse transboundary impact. If those Parties agree that there is likely to be a significant adverse transboundary impact, the provisions of this Convention shall apply accordingly. If those Parties cannot agree whether there is likely to be a significant adverse transboundary impact, any such Party may submit that question to an inquiry commission in accordance with the provisions of [Appendix IV](#) to advise on the likelihood of significant adverse transboundary impact, unless they agree on another method of settling this question.

8. The concerned Parties shall ensure that the public of the affected Party in the areas likely to be affected be informed of, and be provided with possibilities for making comments or objections on, the proposed activity, and for the transmittal of these comments or objections to the competent authority of the Party of origin, either directly to this authority or, where appropriate, through the Party of origin.

ANNEX 2

Examples of EIA report (EIS) content requirements

EU requirements for EIA report content (Annex IV to the EU EIA directive)

INFORMATION FOR THE ENVIRONMENTAL IMPACT ASSESSMENT REPORT

1. Description of the project, including in particular:
 - (a) a description of the location of the project;
 - (b) a description of the physical characteristics of the whole project, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;
 - (c) a description of the main characteristics of the operational phase of the project (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;
 - (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation) and quantities and types of waste produced during the construction and operation phases.
2. A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.
3. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the project as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.
4. A description of the factors specified in Article 3(1) likely to be significantly affected by the project: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.
5. A description of the likely significant effects of the project on the environment resulting from, inter alia:
 - (a) the construction and existence of the project, including, where relevant, demolition works;
 - (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
 - (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;

- (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
- (e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
- (f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;
- (g) the technologies and the substances used.

The description of the likely significant effects on the factors specified in Article 3(1) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the project.

6. A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.
7. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.
8. A description of the expected significant adverse effects of the project on the environment deriving from the vulnerability of the project to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to Union legislation such as Directive 2012/18/EU of the European Parliament and of the Council [\(1\)](#) or Council Directive 2009/71/Euratom [\(2\)](#) or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of this Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.
9. A non-technical summary of the information provided under points 1 to 8.
10. A reference list detailing the sources used for the descriptions and assessments included in the report.

World Bank Proposed Environmental and Social Framework, 2014
Environmental and Social Standards 1: Assessment and Management of Environmental and Social Risks and Impacts, Annex 1: Issues to be addressed in an ESIA

(A) *Executive summary*

- Concisely discusses significant findings and recommended actions.

(B) *Legal and institutional framework*

- Analyzes the legal and institutional framework for the project, within which the environmental and social assessment is carried out, including the issues set out in ESS1, para 2410.
- Compare the Borrower's existing environmental and social framework and the ESSs and identify the gaps between them.
- Identifies and assesses the environmental and social requirements of any co-financiers.

(C) *Project description*

- Concisely describes the proposed project and its geographic, environmental, social, and temporal context, including any offsite investments that may be required (e.g., dedicated pipelines, access roads, power supply, water supply, housing, and raw material and product storage facilities), as well as the project's primary supply chain.
- Through consideration of the details of the project, indicates the need for any plan to meet the requirements of ESS 1 through 10.
- Includes a map of sufficient detail, showing the project site and the area that may be affected by the project's direct, indirect, and cumulative impacts.

(D) *Baseline data*

- Sets out in detail the baseline data that is relevant to decisions about project location, design, operation, or mitigation measures. This should include a discussion of the accuracy, reliability, and sources of the data as well as information about dates surrounding project identification, planning and implementation.
- Identifies and estimates the extent and quality of available data, key data gaps, and uncertainties associated with predictions;
- Based on current information, assesses the scope of the area to be studied and describes relevant physical, biological, and socioeconomic conditions, including any changes anticipated before the project commences.
- Takes into account current and proposed development activities within the project area but not directly connected to the project.

(E) *Environmental and social risks and impacts*

- Takes into account all relevant environmental and social risks and impacts of the project. This will include the environmental and social risks and impacts specifically identified in ESS2 – 8, and any other environmental and social risks and impacts arising as a consequence of the specific nature and context of the project. These will include:
 - (a)Environmental risks and impacts, including:
 - (i) those defined by the EHS11;
 - (ii) those related to community health and safety, including those issues specifically identified in ESS4 (including dam safety and safe use of pesticides);

(iii) those related to climate change and other transboundary or global impacts;
(iv) any material threat to the protection, conservation, maintenance and rehabilitation of natural habitats and biodiversity; and

(v) those related to the use of living natural resources, such as fisheries and forests.

(b) Social risks and impacts, including:

(i) threats to human security through the escalation of personal, communal or inter-state conflict, crime or violence;

(ii) risks that project impacts fall disproportionately on disadvantaged or vulnerable groups;

(iii) any prejudice or discrimination toward individuals or groups in providing access to development resources and project benefits, particularly in the case of disadvantaged or vulnerable groups ;

(iv) negative economic and social impacts relating to the involuntary taking of land or restriction on access to natural resources, including as set out in ESS5 (including physical displacement and economic displacement);

(v) risks or impacts associated with land and natural resource tenure and use, including (as relevant) potential project impacts on local land use patterns and tenurial arrangements, land access and availability, food security and land values, and any corresponding risks related to conflict or contestation over land and natural resources;

(vi) impacts on the health, safety and well-being of workers and project-affected communities; and

(vii) risks to cultural heritage.

(F) *Mitigation measures*

– Identifies mitigation measures and any residual negative impacts that cannot be mitigated and, to the extent possible, assesses the acceptability of those residual negative impacts.

– Identifies differentiated measures so that adverse impacts do not fall disproportionately on the disadvantaged or vulnerable.

– assesses the feasibility of mitigating the environmental and social impacts; the capital and recurrent costs of proposed mitigation measures, and their suitability under local conditions; the institutional, training, and monitoring requirements for the proposed mitigation measures.

– specifies issues that do not require further attention, providing the basis for this determination.

(G) *Analysis of alternatives*

– systematically compares feasible alternatives to the proposed project site, technology, design, and operation—including the "without project" situation—in terms of their potential environmental and social impacts;

– assesses the alternatives' feasibility of mitigating the environmental and social impacts; the capital and recurrent costs of alternative mitigation measures, and their suitability under local conditions; the institutional, training, and monitoring requirements for the alternative mitigation measures.

– For each of the alternatives, quantifies the environmental and social impacts to the extent possible, and attaches economic values where feasible.

(H) *Design measures*

– sets out the basis for selecting the particular project design proposed and specifies the applicable EHS or if the EHS is determined to be inapplicable, justifies recommended emission levels and approaches to pollution prevention and abatement that are consistent with GIIP.

(I) *Key measures and actions for the Environmental and Social Commitment Plan (ESCP)*

–Summarizes key measures and actions and the timeframe required for the project to meet the requirements of the ESSs. This will be used in developing the Environmental and Social Commitment Plan (ESCP).

(J) *Appendices*

- (i) List of the individuals or organisations that prepared or contributed to the environmental and social assessment.
- (ii) References—setting out the written materials both published and unpublished, that have been used.
- (iii) Record of meetings, consultations and surveys with stakeholders, including those with affected people and local NGOs. The record specifies the means of such stakeholder engagement that were used to obtain the views of affected groups and local NGOs.
- (iv) Tables presenting the relevant data referred to or summarized in the main text.
- (v) List of associated reports or plans.

ANNEX 3

NCEA intro and observations on draft regulation



The role of the NCEA in the Netherlands and abroad

Ineke Steinhauer, NCEA

February 2015, Uganda



EIA & SEA in the Netherlands

- Legislation introduced in the 80s
- NCEA is independent, has legal basis and is involved in all EIAs/SEAs in the Neth.
- Advice on ToR for, and reviews of, environmental assessments of plans, programs and projects, to competent authorities (around 250/year)
- NCEA does not elaborate EIAs/SEAs

2



NCEA's international work

- 1) Advice on ToR for, and reviews of, environmental assessments of plans, programmes and projects
- 2) Capacity development of systems and institutions to improve the environmental assessment practice
- 3) Knowledge and learning resources on environmental assessment www.eia.nl

3



Funding & secretariat

- The international department operates under an agreement with the Ministry of Foreign Affairs
- This started in 1993, with a special focus on countries eligible for Dutch International Cooperation
- The NCEA's secretariat consists of 12 staff members for international cooperation (of 60 in total)
- For advisory services, tailor made working groups of experts are installed, for the composition of which the secretariat can lean on a pool of experts

4



Who can ask for support

- Demand driven
- Support to:
 - DGIS partner countries' governments
 - Netherlands Embassies
 - Strategic partners (World Bank, other donors, e.g. Norwegian Oil for development, SIDA SEA-ITP)
 - NGOs in partner countries/regions (training)
- As much as possible in close cooperation with counterpart

6



NCEA co-operation with NEMA in Uganda

- On EIA:
 - In the far past, review of EIA for Bujagali
 - EIA mapping workshop, 2011
- On SEA:
 - Input into draft SEA guidelines, 2007
 - SEA training for the UAIA, 2011
 - Support on SEA for the Albertine Graben, 2010-2013
 - Input for ToR for SEA for the agriculture sector

NCEA involvement in review of EIA regulations

- NEMA asked NCEA input in Sept. 2014
- NCEA gave observations in Nov. 2014 →

NCEA review approach

General good practice benchmarks for the quality of any EIA regulation, such as:

- Ambition of application consistent with (staff) capacity for implementation
- Sufficient scope of assessment (incl. alternatives)
- Participation included
- EIA quality control included
- Accountability sufficiently addressed
- Clear roles, mandates & co-ordination arrangements
- Sufficient arrangements for compliance/enforcement
- Relation to sectoral regulation exists

NCEA review approach

- But also an eye for the process.....
 - Jointly discuss how to organise a (participative) process for development/refinement of the draft EIA regulation
 - involving parties within and outside government to ensure support from those that need to support/can oppose the regulation.

The screenshot shows the website interface for the Netherlands Commission for Environmental Assessment (NCEA). It features a navigation menu with 'countries & profiles' selected. A list of countries is displayed, including Benin, Burundi, Cameroon, Central African Republic, Egypt, Ethiopia, Ghana, Kenya, Mali, Mozambique, Rwanda, South Africa, Sudan, Tanzania, Uganda (highlighted with a red arrow), Zambia, Congo Brazzaville, South Sudan, Zanzibar (Tanzania), and Central America. To the right, there is a 'Disclaimer country profiles' section.

Results of EIA mapping

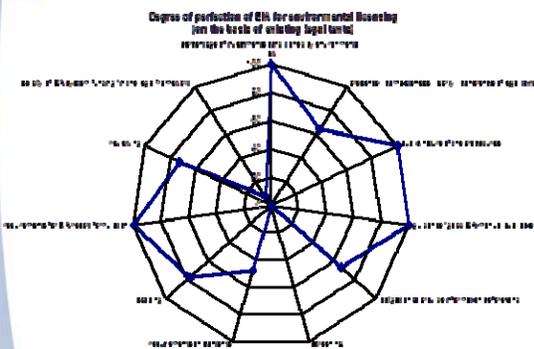
- EIA mapping assesses the quality of the EIA regulatory framework, and the level of its compliance in practice.
- At the heart of the tool is a questionnaire of about 500 questions, which is completed by a group of representatives of all stakeholders in EIA, in a two day workshop.

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July 2011, 17 participants discussed the full range of EIA aspects (6 NEMA, 5 line ministries, 1 private sector, 2 local government, 4 UAIA). Results: range of diagrams that show the strengths and weaknesses of EIA.

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Comparison with other countries

- EIA regulations of neighboring countries (such as Kenya, Rwanda, Tanzania)
- NCEA experience in reviewing and suggesting improvements on draft EIA regulations (e.g. in 7 Central African countries, Zanzibar, Yemen, Mozambique and Pakistan).

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Main observations on draft EIA regulation

1. Screening: mandatory EIA/project briefs
2. Scoping and ToR
3. Public nature of decision making on EIA procedural steps
4. Content requirements for EIS
5. Quality review
6. Decision making and relation to other approval processes

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1) Screening

- Screening lists now attached as Schedule 4 & 5 of NEA (why not to EIA regulation itself?)
- Contain many projects, putting too much pressure on the available capacity (= outcome of EIA mapping). Now would be a good moment to truly revise those lists, perhaps adding thresholds and location criteria etc.
- NEA also contains list with activities requiring Environmental Risk Assessment, add in separate Schedule?

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1) Screening continued

- Consider including a schedule on Exemptions from EIA application, e.g. in case of emergency response to a disaster, NEMA can allow a direct response without first conducting an EIA.
- Consider clarifying (de)centralisation of EIA mandates regarding screening. EIA mapping revealed that some screening decisions are also taken by local authorities.
- There is no reference to screening criteria in the text, whereas these are mentioned in the First Schedule to the regulations

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2) Scoping

- Relation between project brief, scoping report and ToR not fully clear
 - ‘The EIA process shall be initiated by a project brief’ & ‘Where a full EIA is required, the project brief shall serve as the basis for scoping of the environmental impact study’
 - Content requirement for project brief and scoping report partly overlap

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2) Scoping continued

- Also: ‘In preparing the project brief the developer shall pay particular attention to the issues specified in the First Schedule to these Regulations’, but title of the Schedule speaks of ‘Issues to be considered in preparing EIAs’. The word ‘project brief’ is not used.
- In addition, reference is made to ‘guidelines applicable in respect of scoping reports and plans of study for environmental impact assessment’. Where to be found? Status of 2010 EIA sector guidelines? Mention here?

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2) Scoping continued

- How does scoping report relate to ToR?
- Currently it seems that for both separate approval processes are required?
- Not clear whether public participation requirements are only applicable during the environmental impact study and not during scoping and/or ToR?

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3) Public nature

- The EIA regulation lacks clarity on most of the EIA procedural steps, regarding:
 - whether and at which level public participation is required,
 - specifying which are the products/resulting documents as well as the specific decisions made throughout the procedure.
 - For each decision, the new EIA regulation should be specific on whether decisions/documents are (made) publicly available, passively or actively

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4) EIS contents

- The EIA regulation refers to first Schedule for the format of an EIS, but this seems to be incomplete (only cover page, summary)
- The new regulation should specify the content requirements to guide the consultants carrying out the study, but also to function as a reference framework for the review of the quality of the EIS.
- Should ‘trending topics’ (climate change, gender equality, other new issues from NEA) be included in content requirements?

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4) EIS contents continued

- Any requirements for specific alternatives (zero, routing, design etc.)? Requirements to describe compensation for impact that cannot be mitigated (offset)? Direction on how to deal with knowledge gaps?

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5) Quality review

- The draft EIA regulation could be improved regarding the clarity of the review procedure, regarding the decision making mandate and the different roles of NEMA/lead agency?
- Moreover, further guidance on how to carry out review could be developed (which review criteria? steps in review? review report and publication? etc.)
- Technical Review Committee no longer existing?

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6) Decision making

- Good practice EIA separates the decision about the quality of the EIA from project approval. However, the text refers to approval of the project instead of the EIA.
- Therefore, consider to clarify the text about separation of EIA approval (=certificate) from (other) project licenses/permits and provide clarity on the sequence of EIA and other project approvals.

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